

MINUTES OF JUNE 8, 2015

The regular meeting of the Sussex County Board of Adjustment was held on Monday, June 8, 2015, at 7:00 p.m. in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman Dale Callaway presiding. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Brent Workman and Mr. Jeff Hudson. Mr. Norman Rickard was absent. Also in attendance was James Sharp – Assistant County Attorney, and staff members, Mr. Lawrence Lank – Director of Planning and Zoning, Ms. Janelle Cornwell – Planning and Zoning Manager, and Mrs. Jennifer Norwood – Recording Secretary.

The Pledge of Allegiance was led by Mr. Callaway.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Revised Agenda as circulated. Motion carried 4 – 0.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously to approve the Minutes and Findings of Fact for April 20, 2015 as circulated. Motion carried 4 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes and Findings of Fact for May 4, 2015 as circulated. Motion carried 4 – 0.

Mr. Sharp read a statement explaining how the Board of Adjustment meeting is conducted and the procedures for hearing the cases.

PUBLIC HEARINGS

Case No. 11580 – Francis Mellon & Theresa Mellon – seek a variance from the rear yard setback requirement (Section 115-34B of the Sussex County Zoning Ordinance). The property is located on the north side of Vincent Village Drive, west of Beulah Boulevard and being Lot 3 within The Vincent Overlook Subdivision. 911 Address: 29735 Vincent Village Drive, Milton. Zoning District: MR. Tax Map: 2-35-27.00-160.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Francis Mellon was sworn in to testify about the Application. Chad Meredith, Esquire, presented the case to the Board on behalf of the Applicants and submitted exhibits for the Board to review.

Mr. Meredith stated that the Applicants are requesting a variance of 3.1 feet from the ten (10) feet rear yard setback requirement for an existing sunroom; that the Applicants purchased the Property in 2010; that in 2013 the Applicants hired a contractor (Natural Creativity, LLC) to construct a sunroom measuring 10 feet by 16 feet; that the proper permits were obtained and the

Applicants obtained approval from the Homeowners Association; that the Applicants have decided to sell the Property and a survey completed in 2015 for settlement showed the encroachment; that the rear yard is adjacent to the open space; that no neighbors have been adversely affected by the encroachment; that the adjacent neighbors are in support of the Application; that the Property is unique since it is adjacent to open space and there are no neighbors to the rear of the Property; that an exceptional practical difficulty exists; that it would difficult to bring the sunroom into compliance with the Sussex County Zoning Code with little to no benefit to neighboring properties; that the variance is necessary to enable reasonable use of the Property; that the exceptional practical difficulty was not created by the Applicants; that the Applicants relied on the builder to meet all zoning requirements; that the variance will not alter the essential character of the neighborhood; that the sunroom is similar to sunrooms on neighboring properties; that there is no other possible way to develop the Property; that the use is not detrimental to the public welfare; that the variance requested is the least modification of the regulation at issue; and that the variance requested is the minimum variance necessary to afford relief.

Mr. Mellon, under oath, confirmed the statements made by Mr. Meredith and testified that they relied on the contractor to build the sunroom in compliance with the Sussex County Code.

Mr. Meredith submitted three (3) letters in support of the Application.

The Board found that five (5) parties appeared in support of the Application.

The Board found that no parties appeared in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11580 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique in shape due to the angled property lines;
2. The exceptional practical difficulty was not created by the Applicants since the Applicants relied on their contractor;
3. The variance is necessary to enable reasonable use of the Property;
4. The variance will not impair the uses of the neighboring and adjacent properties;
5. The use will not be detrimental to the public welfare;
6. The variance will not alter the essential character of the neighborhood; and
7. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted for the reasons stated and that counsel send a letter to the contractor.** Motion carried 4 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Mills – yea, Mr. Hudson – yea, and Mr. Callaway – yea.

Case No. 11581- Bernice O’Hara – seeks a variance from the rear yard setback requirement (Section 115-25C of the Sussex County Zoning Ordinance). The property is located on the southeast side of Ashwood Drive and being Lot 13 and ½ Lot 14 within Angola by the Bay Subdivision. 911 Address: 32734 Ashwood Drive, Lewes. Zoning District AR-1. Tax Map: 2-34-11.20-149.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Bernice O’Hara and Ron Simmons were sworn in and testified requesting a variance of 7.2 feet from the twenty (20) feet rear yard setback requirement for a proposed sunroom addition. Mr. Simmons testified that he is the contractor for the Applicant; that the Applicant seeks to construct a sunroom on the rear of her house; that the existing dwelling is small and additional living space is needed; that the addition cannot be built on either side of the dwelling due to an existing garage and lack of space; that the Property is pie shaped making it unique; that the only reasonable place to build the addition is to the rear of the dwelling; that the proposed sunroom addition measures 12 feet by 16 feet and is the smallest size that would afford a reasonable use; that the sunroom cannot otherwise be developed in strict conformity with the Sussex County Zoning Code; that the difficulty was not created by the Applicant; that the Applicant owns the adjacent property which has been merged with the Property as shown on the survey; that there are many other homes in the community with similar additions; that the rear yard is adjacent to common area; that the variance will not alter the character of the neighborhood; that the use will not be detrimental to the public welfare; that the variance requested is the least modification possible of the regulation at issue; and that a sunroom of 12 feet wide is the smallest size sunroom that provides a reasonable use because it affords enough room for a table and chairs.

Ms. O’Hara testified that she needs additional living space to accommodate her family; that the common area to the rear of the Property is approximately the width of a road; that her neighbors do not object to the variance request; that her existing dwelling is a one (1) story structure and is approximately 1,200 square-feet in size; and that the dwelling is small and she needs additional space.

The Board found that one (1) party appeared in support of the Application.

The Board found that no parties appeared in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11581 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is shaped like a baseball diamond which makes it unique;
2. The variance is necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variance will not alter the essential character of the neighborhood;
5. The use will not be detrimental to the public welfare; and
6. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Hudson – yea, Mr. Workman – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 11582 – Roy Weismiller & Dino Daichino – seek variances from the side yard setback requirement, the separation requirement between units, the maximum lot coverage requirement in a Mobile Home Park, the minimum lot width requirement, and the minimum lot area requirement (Section 114-172 G(4)(7) of the Sussex County Zoning Ordinance). The property is located on Waterview Court in the Angola Beach Mobile Home Park located on the east side of Angola Beach Road. 911 Address: None Available. Zoning District: AR-1. Tax Map: 2-34-1800-1.00-Unit 12961.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Roy Weismiller and Dino Daichino were sworn in along with Ron Simmons, who was previously sworn in and remains under oath, and testified requesting a variance of 0.6 feet from the five (5) feet side yard setback requirement for an existing screen porch, a variance of 1.1 feet from the twenty (20) feet separation requirement between units, a variance of 0.9 feet from the five (5) feet side yard setback requirement for an existing sunroom, a variance of 9.9 feet from the twenty (20) feet separation requirement, a variance of 3.5 feet from the twenty (20) feet separation requirement, a variance of 300 square feet from the 5,000 square feet lot size requirement, a variance of 28 feet from the fifty (50) feet minimum lot width requirement, and a variance of 1% from the maximum 35% lot coverage requirement in a mobile home park.

Mr. Weismiller testified that they purchased the Property in 2012; that the Applicants are both on disability and must use a hot tub on a daily basis; that there was a concrete pad with a deck on the Property when they bought the lot; that they wanted to enclose the hot tub so it could be used year round; that they hired Patio Systems to construct a sunroom for the hot tub; and that they received a notice from Sussex County that they did not pass the final inspection.

Mr. Simmons testified that his office made a mistake regarding the setback violations; that the sunroom was constructed a couple of years ago but they only recently learned of the mistake;

that the Property is located in Angola by the Bay; that the community was originally designed as a part-time mobile home park; that the existing dwelling is very small and has a small addition to the rear; that the sunroom made the home usable for the Applicants; that the Property is very narrow and is pie-shaped; that the Property is unique; that there is no possibility that the sunroom could be relocated in compliance with the setback requirements; that the variances are necessary to allow continued use of the sunroom; that the Applicants need the sunroom due to their disabilities; that the sunroom provides protection for the Applicants to access the hot tub year-round; that the Applicants would suffer a hardship if the variance were not granted; that the sunroom is an attractive enclosure that would not be detrimental to the character of the neighborhood; that the use is not detrimental to the public welfare; that the sunroom could not be built smaller due to the size of the hot tub and stairs in the room to access the tub; that the variance requested is the minimum variance to afford relief; that the prior deck was a raised structure and the hot tub existed prior to the construction of the sunroom; that the sunroom was constructed on the existing concrete pad and the deck was removed; and that the sunroom slopes up to the roof of the mobile home.

Mr. Lank stated for the record that the park was developed in 1968 or 1969; and that the lots were designed in a wheel shape around that street, making the lots irregular in shape.

Mr. Daichino testified that the existing unit is a 1978 model measuring twelve (12) feet wide; that they purchased the Property in 2012 and built the sunroom in 2012 so that they could use the hot tub year-round; that the Applicants live in the unit year around; that they have made improvements to the mobile home since purchasing the Property; that the neighbors have no objection to the Application; that the neighboring mobile homes were located in their current locations when they purchased the Property; that the sunroom is the only exterior change they have made to the lot; that all other improvements were on the lot when the Applicants purchased the lot; and that the Property is very narrow but they are not sure how narrow the lot is.

Ms. Cornwell stated that she calculated the lot coverage as 36% so a small variance is needed.

Mr. Lank stated that the survey shows the lot as being 32 feet wide in the front and 60 feet wide in the rear; and that Waterview Court is a cul-de-sac with parking spaces.

The Board found that one (1) party appeared in support of the Application.

The Board found that no parties appeared in opposition to the Application.

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the case be taken under advisement. Motion carried 4 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case. Mr. Hudson stated that he would move that the Board recommend approval of Variance Application No. 11582 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The age of the park, placement of neighboring manufactured homes, and the shape of the lot make the Property unique;
2. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
3. The exceptional practical difficulty was not created by the Applicants;
4. The variances will not alter the essential character of the neighborhood; and
5. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 4 – 0.

The vote by roll call: Mr. Mills – yea, Mr. Hudson – yea, Mr. Workman – yea, and Mr. Callaway – yea.

Case No. 11583 – Robert O. Thompson & Christina M. Thompson – seek a variance from the minimum lot width requirement for a parcel (Section 115-42A *Note of the Sussex County Ordinance). The property is located on the west side of Bi-State Boulevard approximately 81 feet north of W. Snake Rd. 911 Address: 36192 Bi-State Boulevard, Delmar. Zoning District GR. Tax Map: 5-32-13.00-32.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Robert Thompson and Christina Thompson and Douglas Williams were sworn in and testified requesting a variance of 99.05 feet from the 150 feet minimum lot width requirement for a parcel. Mr. Williams testified that he is a licensed land surveyor; that the Applicants purchased the Property in 2014; that the Applicants plan to subdivide the Property into two lots to give a lot to their son; that there is an existing dwelling, shed and garage on the north side of the Property; that there is a line of cedar trees which separates the portion of the property where the dwelling is located from the proposed subdivided lot; that the existing landscaping and hedgerow give the Property the appearance of two (2) lots; and that the Property is located along Bi-State Boulevard near Delmar and there are numerous residential buildings in the area.

Mr. Thompson testified that the Property is large enough to accommodate another dwelling; that this subdivision would allow his son to build a house nearby without having to use farmland; that both he and his son are firemen and the Property is close to the firehouse; that they

have approached neighbors and they do not object to the proposal; and that, if the new lot was 150 feet wide, it would cut off the driveway to the existing dwelling.

Mr. Williams testified that the Applicants have obtained a letter of no objection from the Delaware Department of Transportation (“DelDOT”) for the entrance to the proposed lot (Lot 1); that the proposed lot (Lot 1) will have a separate driveway; that the existing dwelling has an access from an existing horseshoe style driveway; that there is a private roadway to the north of the Property which has no public access and the Applicants do not have rights to access that road; and that the Applicants have explored obtaining access to the private roadway.

Mr. Thompson testified that the two lots will not share a driveway; and that the metal shed on the proposed lot (Lot 1) was in its current location when they purchased the Property.

Mrs. Thompson testified that the Property consists of 6 acres.

Mr. Williams testified that the variance will not alter the essential character of the neighborhood; that there are numerous residential properties nearby; that the variance requested is the minimal variance to afford relief; that the Applicants explored a shared driveway but were concerned about the long-term impact of such an access; that the neighboring property to the south of the Property is less than 150 feet wide; and that the line subdividing the two proposed lots was placed in its location due to the location of the line of cedar trees and the sheds.

Mr. Lank stated that the neighboring property to the south is a non-conforming lot.

Mr. Thompson testified that the proposed dwelling on Lot 1 will be similar to the home on their lot and that they will plant Leland Cypress trees between the new driveway and the neighboring lot to the south.

Mr. Williams testified that, if they had subdivided the Property at the south side of the U-shaped driveway, two unusually shaped lots would have been created; that there was nowhere else to place the driveway; and that the proposed lot will be close to 200 feet wide where the dwelling will be placed.

The Board found that three (3) parties appeared in support of the Application.

The Board found that no parties appeared in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11583 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique since it is such a large parcel for one (1) dwelling;

2. The exceptional practical difficulty was not created by the Applicants;
3. The variance is necessary to enable reasonable use of the Property;
4. The use will not impair the uses of neighboring and adjacent properties;
5. The use will not be detrimental to the public welfare;
6. The variance will not alter the essential character of the neighborhood; and
7. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 4 – 0.

The vote by roll call: Mr. Workman – yea, Mr. Mills – yea, Mr. Hudson – yea, and Mr. Callaway – yea.

Case No. 11584 – Michael Kelly – seeks variances from the front yard, side yard, and rear yard setback requirements (Section 115-25C of the Sussex County Ordinance). The property is located on the west side of Tyler Avenue approximately 370 feet south of Lincoln Drive. 911 Address: 38772 Tyler Avenue, Selbyville. Zoning District AR-1. Tax Map: 5-33-20.14-39.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Michael Kelly was sworn in and testified requesting a variance of four (4) feet from the five (5) feet front yard setback requirement for a proposed attached garage, a variance of ten (10) feet from the ten (10) feet side yard setback requirement for existing HVAC, landing, deck, and steps, and a variance of twenty (20) feet from the twenty (20) feet rear yard setback requirement for an existing deck. Mr. Kelly submitted pictures to the Board to review. Mr. Kelly testified that he purchased the Property in 2013; that the Property is located in Cape Windsor; that most lots in the development measure 50 feet by 90 feet and that his lot measures 50 feet by 88 feet; that the size of his lot creates a unique situation; that he needs additional space for storage; that the previous owner built the dwelling in 2001; that the prior owner was a single man and he did not need as much storage space as the Applicant requires; that an exceptional practical difficulty exists; that the proposed attached garage will provide much needed storage and the garage must be 12 feet wide to fit a vehicle; that the variances are necessary to enable reasonable use of the Property; that he plans to store a vehicle in the garage; that the garage will also be used to store the family's larger recreational items; that the variances will not alter the character of the neighborhood; that there are other similar structures in the neighborhood; that the proposed garage will not impact any utility access; the variances will not permanently impair the use or development of neighboring properties; that the existing shed will be removed; that the Homeowners Association has no objection to the Application; that the use will not be detrimental to the public welfare; that the variances are the least modifications of the regulations at issue; that the shed is in disrepair; that the garage will be 12 feet by 24 feet; that the dwelling is 26 feet wide; that the dwelling will be used as a vacation home; that they intend to leave a car at the Property year-round and will place

the car in the garage; and that the deck, porch, and HVAC existed on the lot at the time he purchased the Property.

The Board found that one (1) party appeared in support of the Application.

The Board found that no parties appeared in opposition to the Application.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the case be taken under advisement. Motion carried 4 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case. Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the case be **tabled until June 22, 2015**. Motion carried 4 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 11585 – Sussex Lumber Land Co., LLC – seeks a variance from the front yard setback requirement (Section 115-82B of the Sussex County Ordinance). The property is located at the northeast intersection of Mitchell Street and Dagsboro Road. 911 Address: 655 Mitchell Street, Millsboro. Zoning District C-1. Tax Map: 2-33-5.00-80.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received one (1) letter in opposition to the Application and no correspondence in support of the Application. Ms. Cornwell read the letter of opposition into the record.

Jeffrey Revell was sworn in and testified requesting a variance of 32.1 feet from the sixty (60) feet front yard setback requirement for a proposed shelter; that the proposed shelter is needed to protect lumber stored outside on the Property; that a lumber company has operated on this Property since 1972; that DelDOT has widened the adjacent road over the years and is planning to widen the road again; that the widening of the road has created the need for the variance; that the shelter is referred to as an “L-Shed”; that the shelter will help protect the lumber from weathering; that the proposed shelter is a lumber rack with a roof; that the proposed shelter will be within the fenced in lumber yard; that their parking lot is sometimes used as a shortcut for drivers along the adjacent road; that the proposed structure should help to curb that behavior; that the Property has not changed its elevation; that the shelter roof will be 11 feet wide and 19 feet tall; that the structure will be free-standing with no sides; that the Applicant has stored lumber on this location and is placing the structure simply to cover the lumber; that there will be no change to the existing impervious surface; that neighbors’ concern about run-off comes from other properties; that they are looking to improve their system to better handle run-off as well; that the Property is unique in shape and location; that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code; that the difficulty was not created by the Applicant; that the variance

will not alter the character of the neighborhood; that there is commercial property nearby; that the shelter will improve the appearance of the Property; and that the variance requested is the minimum variance necessary to afford relief.

Suparna Mehra and Suraj Gyani were sworn in and testified in opposition to the Application.

Mr. Gyani testified that he owns property adjacent to the Applicant's lot; that the Applicant has done a great job with its property; that there is a severe run off issue between the properties; that his property is lower than the Applicant's property and water does not drain properly; that his property receives run-off from Route 113 and Mitchell Street; that there are nine (9) manufactured homes on their property; that he wants an easement to a ditch on the Applicant's property; and that he is concerned additional improvements to the Property will adversely affect his property.

Ms. Mehra testified that she is concerned that the proposal will lead to additional water.

In rebuttal, Mr. Revell testified that the proposed shelter is angled to drain into the existing Stormwater Management drains; that the Property is paved at the location of the proposed shed; and that there will be no additional drainage to the neighbor's property.

The Board found that one (1) party appeared in support of the Application.

The Board found that two (2) parties appeared in opposition to the Application.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the case be taken under advisement. Motion carried 4 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case. Mr. Mills stated that he would recommend approval of Variance Application No. 11585 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique in shape and size due to the fact that DelDOT has widened the road;
2. The variance is necessary to enable reasonable use of the Property;
3. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
4. The exceptional practical difficulty was not created by the Applicant;
5. The use will not be detrimental to the public welfare; and
6. The variance will not alter the essential character of the neighborhood; and
7. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Mills – yea, Mr. Hudson – yea, and Mr. Callaway – yea.

Case No. 11586 – Michael C. Brittingham – seeks a variance from the rear yard setback requirement (Section 115-185F of the Sussex County Ordinance). The property is located on the north side of Mary Road approximately 241 feet west of Breasure Road. 911 Address: 25140 Mary Road, Georgetown. Zoning District AR-1. Tax Map: 1-33-6.00-201.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Michael Brittingham was sworn in and testified requesting a variance of 1.3 feet from the five (5) feet rear yard setback requirement for an existing shed; that the shed measured 12 feet by 14 feet and was constructed in 1986 by a prior owner; that the shed was later expanded by removing a lean-to and adding onto the size of the shed; that there is an existing right of way at the rear of the Property; that the shed does not adversely affect the surrounding properties; that the difficulty was not created by the Applicant; that he became an owner of the Property in 1994; that a survey completed in 1993 showed the encroachment; that he discovered the encroachment when reviewing the survey; that he plans to remodel the existing shed; that the variance will not alter the character of the neighborhood; that the shed will not be expanded; that the shed is on an existing concrete pad and has electricity; that there is an existing septic system in the rear yard; and that the shed cannot be moved into compliance. Mr. Brittingham submitted pictures for the Board to review.

The Board found that one (1) party appeared in support of the Application.

The Board found that no parties appeared in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11586 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The existing septic system, concrete floor, and electricity run to the shed create a unique situation;
2. The Property cannot be developed in strict conformity with the Sussex County Zoning Code;
3. The variance is necessary to enable reasonable use of the Property;
4. The exceptional practical difficulty was not created by the Applicant;
5. The variance will not alter the essential character of the neighborhood;

6. The use will not impair the uses of the neighboring or adjacent properties;
7. The use will not be detrimental to the public welfare; and
8. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Hudson – yea, Mr. Workman – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 11587 – James McIntire – seeks a variance from the front yard setback requirement (Section 115-25C of the Sussex County Ordinance). The property is located on the north side of Harbor Road Extended and northwest of Cedar Road. 911 Address: 19 Harbor Road, Rehoboth Beach. Zoning District AR-1. Tax Map: 3-34-14.05-22.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received one (1) letter in support of the Application and four (4) letters in opposition to the Application.

James McIntire was sworn in and testified requesting a variance of thirty (30) feet from the thirty (30) feet front yard setback requirement for an existing pergola; that he purchased the Property in 1994; that he built the new dwelling in 2013; that the Property was featured in the Washington Post in June 2014; that the design of the dwelling and pergola are very unique to the area; that the existing pergola and bridge are currently over his property line; that he plans to move the pergola and bridge behind the existing fence so that the entire structure is located on his property; that the recent improvements have raised the property values and benefitted the neighborhood; that he asked for comments from neighbors in North Shores and received many favorable responses to his request; that the eclectic neighborhood consists of all types of dwellings; that the pergola measures 9 feet by 11 feet; that the existing fence ties in with the pergola and bridge; and that he had an arch and bridge for 18 years but he did not obtain a permit for those structures.

The Board offered the Applicant more time to prepare his case and he accepted.

The Board found that one (1) party appeared in support of the Application.

The Board found that no parties appeared in opposition to the Application.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to **leave the hearing open until June 22, 2015 to allow the Applicant more time to prepare his case**. Motion carried 4 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Mills – yea, Mr. Hudson – yea, and Mr. Callaway – yea.

Case No. 11588 – Clear Channel Outdoors, Inc. – seeks a special use exception to place an off-premise sign, and variances from the maximum square footage and maximum height requirements for an off-premise sign (Section 115-80C, 115-210(3)(6), 115-159.5 B(3), and 115-159.5(C) of the Sussex County Ordinance). The property is located on the west side of Route One (Coastal Highway) approximately 846 feet north of Willow Creek Road. 911 Address: 16218 Coastal Highway, Lewes. Zoning District C-1. Tax Map: 2-35-23.00-52.01.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Nancy Chernoff was sworn in to testify about the Application. John Paradee, Esquire, presented the case to the Board on behalf of the Applicant and submitted an exhibit booklet for the Board to review.

Mr. Paradee stated that the Applicant is requesting a special use exception for an off-premise sign and a variance of fifteen (15) feet from the twenty-five (25) height requirement for an off-premise sign, and a variance of 300 square feet per side from the required 300 square feet per side maximum square footage requirement; that the proposed sign will support no more than one sign; that the sign will be adequately set back from the front and side yards; that the sign will be at least 300 feet from the nearest dwelling, church, school, public lands, or another sign regulated by the Code; that the billboard will not substantially adversely affect the uses of the uses of neighboring and adjacent properties; that the billboard will not alter the character of the surrounding area; that there are numerous billboards along this span of Route 1 which is a heavily traveled highway; that the Board has approved similar signs including a sign ¼ miles north of the Property and 1.9 miles south of the Property; that the proposed off-premise sign will not be visible to residential properties in the area; that there is a substantial tree line and a hotel between the location of the proposed billboard and the nearest residential community; that the Property is located immediately adjacent to the southbound lane of Route 1 which supports the routine usage of billboard signs; that the Property is unique because it is bordered on the north and south by tree lines and structures of such significant height and density that limiting any billboard sign to the dimensional and height requirements would result in a peculiar and exceptional practical difficulties; that a Code compliant billboard would not be readily visible and would be blocked by the trees and structures; that the proposed billboard would be located north of the Red Mill Inn sign and south of the large tub as shown on a photograph in Exhibit F of the booklet; that a Code compliant sign would be partially blocked by the existing tub and would be difficult to see from the north and the tree line would block the view of the billboard from the south; that requiring the Property to conform with the height and dimensional requirements of the Code would plan an unreasonable burden on the Applicant, the property owner, the business patrons, and the general public; that, without the variances, the proposed off-premise sign would be less-visible, which

could result in confusion or unsafe distraction to the driving public; that the difficulty was not created by the Applicant, due to the nature of the site and surrounding properties; that the billboard will not alter the essential character of the neighborhood or impair the use or development of adjacent properties or be detrimental to the public welfare; that strict compliance with the Code would provide minimal public benefit; that the variances are the minimum variances to afford relief; that the proposed billboard will be forty (40) feet tall; that the height variance would provide visibility above the existing tree line and building structures; that the sign is the same height and size as a billboard located 1,000 feet to the north; that the difficulties presented to the Applicant are practical and exceptional and would place the Applicant at a competitive disadvantage; that the square footage variance will better proportion the sign and provide better visibility due to the proposed height; that the height of the other obstructions in the area are approximately 25 feet; that the billboard needs to clear those obstructions to be visible; that the existing tree line consists of mature trees; that the Applicant is not seeking to go higher than what is needed to clear the obstructions; that the height of the billboard is consistent with other signs in the area; that the proposed billboard will be a two-sided and measure 12 feet by 50 feet; and that there will be one (1) advertisement per side on the sign.

Nancy Chernoff testified that the Applicant has a policy that billboards be leased 90% of the time; that there are visibility concerns if the billboard is raised but not increased in square footage; that the trees are on the neighbor's property and the neighbor had no desire to remove the trees; and that she confirms the statements made by Mr. Paradee as true and correct.

Richard Bell was sworn in and testified in opposition to the Application and testified that he owns the adjacent property where Harvard Business Services is located; that properties north of the Property along Route 1 are mainly farmland; that there are already traffic issues in the area; that the billboard will distract drivers; that there have been accidents in that area; and that he is concerned the proposed billboard creates a safety issue.

Susie Hudson was sworn in and testified in opposition to the Application and testified that she also owns an adjacent property; that the billboards on her property were there at the time she purchased her lot; that the proposed billboard will add to the traffic issues in the area; that she feels there are better locations available for the sign; that there is a lot business in the area; and that there are a lot of accidents in the area.

In rebuttal, John Paradee stated that traffic safety is an issue for the Department of Transportation ("DelDOT") issue; that there is already a similar sign in the area north of the Property; and that the proposed sign will not block any views or other signs in the area.

The Board found that one (1) party appeared in support of the Application.

The Board found that two (2) parties appeared in opposition to the Application.

Motion by Mr. Workman, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until June 22, 2015**. Motion carried 4 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Workman – yea, and Mr. Callaway – yea.

Meeting Adjourned 10:12 p.m.